

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
RICHARD EVERETT SWEITZER and ) Bankruptcy Case No. 97-60504  
JENIFER ANNETTE SWEITZER, )  
Debtors. )

OPINION

This matter having come before the Court for confirmation of Debtors' Chapter 12 Plan of Reorganization and on Objections thereto filed on behalf of AmBank Illinois, N.A. and Continental Grain Company; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Prior to hearing on confirmation and objections on January 16, 1998, the Debtors and Creditor, Continental Grain Company, essentially resolved their differences. As such, the main issue raised in AmBank's Objection to the Debtors' Chapter 12 Plan concerns the valuation of the Debtors' real estate, livestock, equipment, grain, and growing crops. Creditor, AmBank, places a total value on these items of \$866,517, while the Debtors value the same items at \$407,810, a difference of \$458,707.

On the issue of valuation, the Court heard substantial testimony from both the appraiser for AmBank and the appraiser for the Debtors and received into evidence numerous exhibits. As reflected above, the appraisals submitted vary greatly as to their conclusion on the value of the Debtors' assets. The Court has closely examined the appraisals which have been filed and has reviewed the testimony offered at hearing on January 16, 1998. The Court concludes that the appraisal offered by the Debtors as to their livestock, machinery, pick-up truck, and computer reflects the most accurate, practical fair market valuation of the assets in question.

In considering the appraisal testimony of both the Debtors' appraiser, Nelson Aumann, and AmBank's appraiser, Donald Cochran, the Court found that the testimony as to valuation offered by Mr.

Aumann was the most credible and realistic of the two. The Court bases this finding on the fact that Mr. Aumann has no prior or continuing connection to the Debtor, Debtors' attorney, or to AmBank. Mr. Aumann did not know the values that the Debtor had scheduled for the various assets at the time of his appraisal or at the time of his testimony. Further, Mr. Aumann appeared to have more current knowledge concerning the market conditions with regard to hog prices, and he has been qualified as an expert appraiser on many occasions before this Court. The Court also finds that Mr. Aumann has had more experience in valuing operations, such as the Debtors', than has Mr. Cochran. While the Court found Mr. Cochran to be a credible witness, there were various things about his testimony which caused the Court to find that his valuation was not realistic under the circumstances. First, the Court would note that Mr. Cochran has a much closer relationship with the commercial banking industry than does Mr. Aumann, and also it was apparent that Mr. Cochran has a very close relationship with the Farmers Home Administration, who holds a guarantee on the debt owed to Creditor, AmBank. Thus, Mr. Cochran has an interest in valuing the Debtors' property at a much higher figure than does Mr. Aumann. Additionally, the Court finds that Mr. Cochran's appraisal defies logic in the light of certain statements which both appraisers made regarding market conditions. It was uncontroverted that hog prices have been dropping and are now below the cost of production in many instances. Many small operators are leaving the hog industry, while large hog operations are moving in with modern state of the art facilities and technology. Further, the environmental problems surrounding hog operations appear to be mounting, thus making it very costly for small hog farmers to remain in the business. In direct contrast to these uncontroverted conditions in the hog industry, Mr. Cochran states that buyers would be lining up to purchase the Debtors' assets, and that, as such, they should have a high value placed upon them. This statement is not logical and makes little sense in light of the present conditions in the hog industry. As such, it lacks the credibility necessary to substantiate Mr. Cochran's appraisal. Finally, the Court would note that Mr. Cochran's appraisal contradicts some of his own testimony. At one point, Mr. Cochran testified that the hog industry is in a downturn at the present time. He also testified that his 1995 appraisal rated sales activity, effective purchase power demand, desirability, property compatibility, and overall value trend as average or fair,

while nonagricultural influences were rated as poor. In his most recent appraisal, of December 1997, Mr. Cochran rated the sales activity, effective purchase power demand, desirability, property compatibility, and value trend as good, which is the highest rating possible. This statement does not make sense in light of his own testimony that the hog industry is in a downturn at the present time. The Court also finds it interesting that a substantial portion of the loans made AmBank to the Debtors were made before the appraisals were performed by Mr. Cochran in 1995. As such, the Court finds that it is all too likely that the 1995 appraisal results were intended to justify the loans made by AmBank to the Debtors rather than to represent an accurate picture of the fair market value of those assets. With all this in mind, the Court finds that the appraisal testimony of Nelson Aumann was more credible than the testimony of Donald Cochran, and the Court accepts that appraisal in large part as being the most accurate valuation of the Debtors' assets.

Although the Court found the appraisal of Nelson Aumann to be the most accurate as to value of the Debtors' assets, the Court, in reviewing the appraisal, finds that Mr. Aumann's appraisal of the real estate, at \$268,500, is a bit low and requires some adjustment. In reviewing all of the testimony, the Court finds that an upward adjustment of \$57,000 is necessary, thus bringing the value of the Debtors' real estate up to \$325,500, with the Debtors' total assets having a reasonable fair market value of \$464,810.

As a result of this opinion of the valuation of the Debtors' assets, the Court finds that it is appropriate to allow the Debtors a period of 21 days in which to file an Amended Chapter 12 Plan of Reorganization showing the values of its assets as found by the Court in this Opinion. A hearing will be held on the Debtors' Amended Chapter 12 Plan of Reorganization on April 17, 1998, at which time the Court will also hear argument from Creditors, AmBank and Continental Grain Company, on the issue of preferential transfer, as raised by Creditor, Continental Grain Company, in its Objection to Confirmation and in its Brief in support of its Objection.

ENTERED: February 27, 1998.

/s/ GERALD D. FINES

United States Bankruptcy Judge